

Sydnor_SB 294 Testimony Fav-EEE.pdf

Uploaded by: Charles E. Sydnor III

Position: FAV

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Judicial Proceedings Committee

Executive Nominations Committee

Joint Committees

Administrative, Executive, and
Legislative Review

Children, Youth, and Families

Senate Chair
Legislative Ethics

Chair
Baltimore County Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony Regarding SB 294
Comprehensive Plan – Implementation and Review in Priority Funding Areas
Before the Education, Energy, and the Environment Committee
February 14, 2023**

Good afternoon Chair Feldman, Vice-Chair Kagan, and committee members,

Senate Bill 294 purpose of altering the implementation and review of a comprehensive plan within a priority funding area. According to the Maryland Department of Planning, a comprehensive plan¹ is:

a document, officially adopted by the local governing body, which spells out the manner in which a municipality, county or sub-area of a county should develop. Typically, it includes a map showing proposed future land use and anticipated transportation and community facilities. It also contains policies for protecting environmental features and recommendations for amending local development-related ordinances in a manner that helps achieve the comprehensive plan's objectives.... The plan has legal significance in that zoning, provision of water and sewer, and other local actions must be consistent with its recommendations.

The plans also cover every facet from “housing and transportation, to education and environment, to economic competitiveness and equity.”² It is the template of the “systems” at play in our different jurisdictions; that is why they are so important. Senate Bill 294 intends to close what my constituent and witness, Nicholas Stewart, calls the “PFA loophole”.

In the 2008 case, *David Train v. Terrapin Run LLC*¹, a closely divided Maryland Court of Appeals

¹ The comprehensive plan may also be known as a "general plan", "master plan", "master development plan" or "comprehensive master plan"

² Nick Stewart & Pat Keller. [Opinion: Time to overhaul Baltimore County's planning, development review and zoning process.](#) *Maryland Matters*. August 12, 2022.

held that our state’s Smart Growth statutes regarding development:

did not require strict conformity with the comprehensive plan for two reasons. First, the plan was a guide for future development of the county, but it had no regulatory effect unless a statute, ordinance, or regulation required compliance with its recommendations. Second, the use of the term “conforms to the plan,” which first appeared in amendments to Article 66B in 1970³ and was retained in 1992, had essentially the same meaning as the usage prior to that date, which required that special exceptions should be “in harmony” with the plan. The court went to considerable length in supporting its position that various “Smart Growth” statutes had not mandated that counties have comprehensive plans, or if they did, the state had no power to enforce a conformity clause.³

In response to this decision, the 2009 session of the General Assembly enacted the Smart Growth and Sustainable Development Act, essentially overturning Terrapin Run. A new Section 1.02 of Article 66B was adopted requiring "consistency" with a master plan when reviewing a special exception or adopting zoning and development ordinances and regulations.

However, as noted by Professor Hanson, the General Assembly “made an exception that swallowed a substantial length of the rule.” The statute did not require actions taken in Priority Funding Areas to be consistent with plans with regard to land uses and densities or intensities.⁴ Couple that with our jurisdictions viewing comprehensive plans as mere guidance ultimately undermine plans’ utility, especially in jurisdictions where large swaths of the jurisdiction where development should occur are designated Priority Funding Areas. Baltimore County is a good example of this; our County Code states that our plan “shall be made with the *general purpose of guiding* and accomplishing a coordinated, adjusted, and harmonious development of the county and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development and maintenance of property values previously

³ Consistency with Comprehensive Plans: Does Maryland Law Mean What it Says, or Say What it Means. Royce Hanson, page 120. In fact, the Court wrote: “Accordingly, we find ,nothing in the history of the 1992 legislation that remotely indicates that the Legislature believed that it was establishing that the use of the word ‘conform’ in the 1970 statute and as stated in Article 66B, without additional restrictive language which was not added, imposed any stricter standard on such land use decisions than the traditional ‘in harmony with’ language of the pre-1970 statute or our pre-and post-1970 cases meant the same thing.” Terrapin Run at 569.

⁴ Hanson, pg. 121-122.

established.”⁵ Obviously, guidance is not mandatory.

In order to move us from a guidance framework to a regulatory framework, SB 294 repeals §1-304 and makes §1-303 controlling. This is significant as it elevates comprehensive plans from mere guidance to actual mandated plans. For a jurisdiction like Baltimore County this change is necessary, as priority funding areas encompass “almost all of the land within the developable parts of [the] county,”⁶ and currently designates the county council members as arbiters of land use decisions within their councilmanic district rather than allowing for a more wholistic, “comprehensive” plan taking into account the whole jurisdiction.⁷ Senate Bill 294 will transform comprehensive plans from mere “aspirational documents that can be ignored by local decision-makers, at their discretion, into a controlling document that governs future map amendments”⁸ This is the right first step in providing transparent, collaborative, sustainable and equitable development. I ask you to vote to report SB 294 out from this Committee favorably.

⁵ County Code 32-2-202(a). See also <https://www.wtplaw.com/news-events/baltimore-county-master-plan-2020-and-comprehensive-zoning>. As noted by By The People, “Despite the heightened importance of growth planning, the county (through the county council) has regularly made decisions in a way that is (a) on-demand, ad-hoc and project-by-project, and (b) often political, parochial and emotional. This has been contrary to the various master plans adopted by the county since the first one was adopted in 1975, but the law has allowed the county to do this.” See [Microsoft Word - Equitable Growth White Paper \(FINAL\) \(wethepeoplebaltco.com\)](#), pg. 1.

⁶ But also in Maryland’s “five metropolitan counties.” Hanson, *supra* note 4, pg. 10. This is also known as the Urban Rural Demarcation Line. Stewart & Keller, *supra* note 1.

⁷ Stewart & Keller, *supra* note 1.

⁸ [Microsoft Word - Equitable Growth White Paper \(FINAL\) \(wethepeoplebaltco.com\)](#), pg. 4.

SB 294 - OPP - MML.pdf

Uploaded by: Angelica Bailey

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

February 14, 2023

Committee: Senate Education, Energy, and the Environment

Bill: _____ SB 294 - Comprehensive Plan – Implementation and Review in Priority Funding Areas

Position: **Oppose**

Reason for Position:

The Maryland Municipal League strongly opposes Senate Bill 294, which would override local zoning authority and stall growth in Priority Funding Areas, which include municipalities themselves.

Priority Funding Areas (PFAs) were established to make the most efficient and effective use of taxpayer dollars for infrastructure by targeting State resources to build on past investments and encourage projects in already developed areas. PFAs include enterprise zones, neighborhood revitalization areas, heritage areas, and almost every municipality in the State. Funding to PFAs encourages and supports growth and development like highways, sewer and water construction, and economic development assistance.

The current law was designed to increase flexibility and support for PFAs. Requiring PFAs to further land uses and density/intensity factors complicates the review process and raises the bar for what qualifies as a “consistent” PFA. Fewer PFAs means less funding to State-designated priority areas. This would be detrimental to our municipalities and by extension, many Marylanders.

As such, the League respectfully requests that this committee provide SB 294 with an unfavorable report.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns
Angelica Bailey Thupari, Esq.
Bill Jorch
Justin Fiore

Chief Executive Officer
Director of Advocacy & Public Affairs
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SB0294-EEE_MACo_OPP.pdf

Uploaded by: Dominic Butchko

Position: UNF



Senate Bill 294

Comprehensive Plan - Implementation and Review in Priority Funding Areas

MACo Position: **OPPOSE**

To: Education, Energy, & Environment
Committee

Date: February 14, 2023

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** SB 294. The bill would upend a carefully crafted policy regarding development in county-designated priority funding areas. If enacted, this legislation could deter desirable affordable housing and future smart growth initiatives.

In 2008 the Maryland Court of Appeals handed down a decision in *Trial v. Terrapin Run* that, in the absence of legislative language stating otherwise, solidified the “in harmony with” standard regarding special exceptions. Specifically, the case centered around a development (Terrapin Run) and how it complied with Allegany County’s comprehensive plan.

During the 2009 legislative session, the General Assembly and Governor responded to the *Trial v. Terrapin Run* decision by passing a suite of related legislation, including most notably HB 297 of 2009. This legislation clearly and deliberately set parameters for projects in priority funding areas, outlining that consistency with comprehensive plans does **NOT** include “land uses, densities, or intensities.”

Further, the General Assembly included in the bill preamble,

“WHEREAS, It is the intent of the General Assembly to encourage the development of ordinances and regulations that apply to locally designated priority funding areas and allow for mixed uses and bonus densities beyond those specified in the local comprehensive plan by excluding land uses and densities or intensities in the definition of “consistency” for priority funding areas”

Revisiting this important policy choice and reintroducing land uses, densities, or intensities as considerations within priority funding areas could serve to slow development projects in designated “smart growth” corridors. In the present housing environment, especially, this could serve counter to policy goals to expand housing supply in areas already served by central infrastructure. The 2009 bill struck a sensible balance, with the support of many stakeholders.

HB 297 of 2009 has been a long-settled issue regarding development in priority funding areas. In the current housing environment, SB 294 will only serve to exacerbate an already bad situation. Accordingly, MACo urges the Committee to issue an **UNFAVORABLE** report on SB 294.

Comprehensive Plan

Uploaded by: Richard Eberhart

Position: UNF

Molander, Sharon

Subject:

FW: SB0294

LATE TESTIMONY

From: Rich Hall <richard.eberhart.hall@gmail.com>
Sent: Monday, February 13, 2023 5:00 PM
To: Feldman, Brian Senator <Brian.Feldman@senate.state.md.us>
Subject: SB0294

Chairman Feldman - you may recall that I was MDP Secretary under Governor O'Malley, and MDP staff for 15 years before that. Sorry to be writing to you directly and not using the General Assembly's system to testify, but I just learned of this bill today and was unable to use the system. Regardless, I thought it was important to share my thoughts with you on this bill. I oppose it and am only speaking as a citizen and professional planner.

The bill would change the comprehensive planning consistency standard. It would eliminate the standard that applies inside the Priority Funding Areas (PFAs) and use the standard for outside the PFAs for everything. The reason for a slightly different standard within the PFAs is because they are areas already planned for growth by both the State and local governments and therefore somewhat more flexibility is appropriate for how that growth occurs within these areas--the details of which should be addressed via zoning.

Background: In 2008 the Court of Appeals rendered a decision (Trail vs. Terrapin Run) that muddled the original comprehensive plan consistency requirement from the Economic Growth, Resource Protection, and Planning Act of 2002. This decision made national news in the planning and smart growth world. Many were concerned that the status or value of their comprehensive plans were significantly diminished via this decision. SB0280 / HB0297 of the 2009 Session addressed this problem by reestablishing the consistency requirement and elaborating on the meaning of consistency. This was the result of national research with the American Planning Association and many conversations with stakeholders across the State. We developed standards for consistency and they are somewhat more elaborate for areas outside of Priority Funding Areas vs. inside. By its very nature development within growth areas is going to be more complex than development outside of growth areas--therefore more flexibility is needed and the existing consistency standards allow for that.

Please feel free to contact me if you care to discuss further.

--thx, Rich

Richard Eberhart Hall, AICP
332 Paddington Road
Baltimore, MD 21212

SB 294 - Comprehensive Plan - Implementation and R

Uploaded by: Tom Ballentine

Position: UNF



February 13, 2023

The Honorable Brian J. Feldman, Chair
Education, Energy, and the Environment Committee
Miller Senate Office Building, 2 West
Annapolis, MD 21401

Oppose: SB 294 – Comprehensive Plan – Implementation and Review in Priority Funding Area

Dear, Chair Feldman and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate, oppose Senate Bill 294 because it would impede the use of Planned Unit Development, overlay zones, mixed use zoning, performance zoning and other innovative land planning techniques within the designated growth areas of the state.

Current law contains a two-tiered test to determine consistency of a development proposal with the comprehensive plan of the jurisdiction. The two-tiered approach was adopted by the General Assembly in order to make it harder to develop land outside of designated growth areas (Priority Funding Areas, PFA's) while providing the flexibility necessary to use innovative land planning techniques within those areas that the state and local governments have decided to direct growth. Senate Bill 294 would apply one standard of review to all areas of the state making it more difficult for PFAs to function as they were intended.

The most important and innovative land use techniques are not rigid predetermined uses, densities and intensities, that would be required by Senate Bill 294 but instead rely on Planned Unit Developments, performance zoning, overlay zones, and design guidelines approaches that allow for creative development solutions that are consistent with the intent and goals of the plan.

Local governments with planning and zoning authority develop comprehensive plans to guide growth and development over a 20-year planning time horizon. The comprehensive plans in effect today were not written to forecast detail about density, intensity, and use with the specificity required to meet the requirements of Senate Bill 294. That is one of the reasons that the Montgomery County comprehensive plans contain a statement that the plan is intended to last for 20-years, and that over time detailed recommendations will be come less relevant and general objectives will carry more weight. Comprehensive planning documents are often aspirational and contain internal statements that contradict one another. Senate Bill 249 would require reconciling those kinds of statements before plan adoption in order to maintain strict consistency.

For these reasons, NAIOP respectfully recommends your unfavorable report on Senate Bill 294.

Sincerely,

A handwritten signature in blue ink that reads "T.M. Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: Education, Energy and the Environment Committee Members
Nick Manis – Manis, Canning Assoc.

SB0294_Letter_of_Information.pdf

Uploaded by: Rebecca Flora

Position: INFO



Maryland DEPARTMENT OF PLANNING

February 13, 2023

The Honorable Senator Brian J. Feldman
Chairman
Senate Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

RE: SB0294 - Comprehensive Plan - Implementation and Review in Priority Funding Areas

Dear Chairman Feldman:

I am writing to provide you some additional background information on the potential impact that SB0294 - Comprehensive Plan - Implementation and Review in Priority Funding Areas may have on local governments implementing their local comprehensive plans. Please note the Maryland Department of Planning does not take a position on the bill but we would like to highlight some of the challenges facing local governments as they implement their comprehensive plans.

When the General Assembly passed SB 280 in 2009 the legislators affirmed the importance of making land use decisions that are consistent with the comprehensive plan. The preamble of this law noted that communities devote significant time and resources preparing the comprehensive plan and “that comprehensive plans should be followed as closely as possible while not being elevated to the status of an ordinance and that deviations from the plan should be rare.”

Citizens and businesses place great reliance on the comprehensive plan when they make decisions on where to buy a home or locate their business. Yet, the comprehensive plan cannot anticipate all future events, and the plan needs to provide some flexibility to address market changes and the interests of private property owners.

SB 280 acknowledged there may be instances where the general descriptions of uses and density in the plan may not fully anticipate the future interests of the community by stating, “It is the intent of the General Assembly to encourage the development of ordinances and regulations that apply to locally designated priority funding areas and allow for mixed uses

and bonus densities beyond those specified in the local comprehensive plan by excluding land uses and densities or intensities in the definition of “consistency” for priority funding areas[;].” Nearly fifteen years later, the need to encourage mixed-use communities and affordable housing opportunities is even more paramount.

The challenge a local government has today is to prepare a comprehensive plan that embodies the vision of the community and lays out a well-defined path forward that citizens and businesses can believe in and help achieve, yet not make the plan so prescriptive that it potentially limits the innovation, investment, and opportunity to create an even greater community than was envisioned when the comprehensive plan was adopted. §1-304 of the Land Use Article provides within the community’s designated priority funding area some of that flexibility in terms of allowed uses and densities; yet local governments still have the required consistency provisions of the plan when it comes to other implementation mechanisms, such as adequate public facilities, affordable housing mandates, and capital improvements programming to help address the unintended consequences that comes with future development.

The Maryland Department of Planning is committed to promoting consistency of the comprehensive plan through our efforts assisting local governments prepare the best comprehensive plans possible and by our evaluations and recommendations of local plan implementation efforts, such as reviewing county water and sewerage plans and proposed municipal annexations. We look forward working with the General Assembly and local governments to advance quality comprehensive planning and the implementation of these plans to create healthy, livable communities where we leave no one behind.

Thank you for your consideration and please feel free to contact me with any questions you may have concerning this bill. We appreciate the opportunity to submit comments regarding SB0294.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca L. Flora". The signature is written in a cursive, flowing style.

Rebecca L. Flora
Acting Secretary

cc Senator Charles E. Sydnor, III